IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1229 OF 2004

Shri Sham Vitthal Rasane & ors. ... Appellants

V/s

Dattatraya Nathu Jagtap & ors. ... Respondents

Mr. P.B. Shah for the appellants.

Mr. Milind Deshmukh for the Respondent No.1.

CORAM: P.V. KAKADE, J.

DATED: 24TH OCT., 2005

P.C.:

1. The appellants have preferred this appeal against the judgment and order dated 28.4.2004 passed by the Joint District Judge, Pune, dismissing the appeal and confirming the judgment and order passed by the Civil Judge, J.D., Junnar, Dist. Pune, dated 18.1.2002 decreeing the plaintiff's suit to the effect that western side wall of City Survey Nos. 3840 and 3841 is a separate wall and exclusively belongs to the plaintiff and, therefore, consequential relief came to be granted against the defendants of perpetual injunction.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff came with the case that the suit property is owned and possessed by him and defendants are having property bearing Nos. 3842 and 3843 towards western side. Western side wall of plaintiff’s house is exclusive wall of plaintiff and abutting to western side wall defendants are having their property. The wall of the house of defendants which is towards western side wall of plaintiff’s house is separate. In short, the wall of the house of plaintiff and defendants are touching to each other. It was alleged that the defendants intended to construct new house and, therefore, wanted to demolish the western side wall and hence the suit for declaration and injunction is filed.

Defendants contested the suit inter-alia denying the allegations made by the plaintiff submitting that the suit wall was not belonged to the plaintiff exclusively and, therefore, sought dismissal of the suit.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had

proved that the western side wall of house C.T.S. No. 3840 and 3841 is separate wall and exclusively belongs to him. It was further held that the plaintiff proved that the defendants tried to damage the said wall and, as such, it was held entitled for declaration and perpetual injunction against the defendants.

The appeal was carriedto the District Court. The learned Joint District Judge, after hearing both sides, came to the conclusion that the findings recorded by the Trial Judge were legal and proper and dismissed the appeal. Hence the present appeal.

5. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The only dispute pertaining to the ownership of wall is the issue of fact which is seen to be adjudicated by both the Courts below on the basis of available evidence and in proper manner. The learned lower appellate Court has relied upon various cases of evidence led by the plaintiff including the rent note of the year 1913 Exh.52 and another rent note of 1922 Exh.53 alongwith a mortgage deed when plaintiff’s father mortgaged the said property vide Exh.54 and other documents at Exhs. 55 and 56 which were held sufficient to show that the

western side wall was of exclusive ownership of plaintiff. Besides this aspect, the lower appellate Court also relied upon the evidence of defendants' witness Mr. Joshi, who had carried out the measurement of defendants' property on their application. The measurement map is also on record which shows that there were two separate walls i.e. western side wall to the property of the plaintiff and eastern side wall of the property of the defendants which were located adjacent to each other but separately and this aspect was held to be in favour of the plaintiff holding that the western side wall belongs to the plaintiff.

In view of this aspect, I hold that both the Courts below have recorded concurrent findings to the effect that the wall in question is exclusively belongs to the plaintiff and, as such, I do not intend to interfere with the findings recorded by the Courts below as they are seen to be just, legal and proper.

6. In the result, the appeal stands dismissed with no order as to costs.

Consequently, Civil Application No. 1662 of 2004 also stands dismissed with no order as to costs.

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